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Attorneys for Post-Effective Date USA Capital Diversified Trust Deed Fund, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS, LLC,

USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,

USA CAPITAL FIRST TRUST DEED FUND,
LLC,

USA SECURITIES, LLC,

Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under
Case No. BK-S-06-10725 LBR

**STIPULATION FOR AMENDMENT
OF PROOF OF CLAIM NUMBER
10725-00545 FILED BY ELIAS FAMILY
TRUST DTD 5/19/04**

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☒ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Hearing Date: December 14, 2007
Hearing Time: 9:30 a.m.

1 The USACM Liquidating Trust (the “USACM Trust”) and USA Capital Diversified
2 Trust Deed Fund, LLC (“DTDF”) hereby stipulate with the Elias Family Trust dtd 5/19/04
3 (“Claimant”) as follows:

4 1. On or about October 10, 2006, Claimant filed Proof of Claim No. 10725-
5 00545 against USA Commercial Mortgage Company in the amount of \$125,000.00 (the
6 “Claim”).

7 2. Claimants provided documentation attached to the Proof of Claim that Claim
8 10725-00545 is, in part, an investment in DTDF and, in part, an investment in various
9 loans as a Direct Lender.

10 3. DTDF, upon reviewing DTDF’s books and records, has determined that
11 Claimant in fact holds an allowed equity security interest in DTDF in the amount of
12 \$48,047.32, as of April 13, 2006 (the “Petition Date”).

13 4. On September 14, 2007, the USACM Trust and DTDF jointly filed an
14 “Objection of USACM Trust To Elias Family Trust dtd 5/19/04’s Claim Filed in Wrong
15 Debtor’s Case; Objection of DTDF to Proposed Allowance of Claim” [Docket No. 4795]
16 (the “Objection”), requesting that Claim No. 10725-00545 be disallowed in its entirety in
17 the USA Commercial Mortgage (“USACM”) bankruptcy case due to the Claim having
18 been erroneously filed in the USA Commercial Mortgage Company case when the Claim
19 is based upon an equity interest in DTDF.

20 5. Subsequent to filing the Objection, counsel for the USACM Trust discussed
21 with Woodrow Elias, trustee for Claimant, the merits of the Objection and the
22 documentation presented by Claimant in support of the Claim totaling \$125,000.00.

23 6. Pursuant to such discussion, the USACM Trust agreed to (i) seek a
24 continuance of the hearing on the Objection, initially set for October 15, 2007, at 9:30 a.m.
25 and continued at that date and time to December 14, 2007, at 9:30 a.m., so that the parties
26 could enter into this stipulation, and (ii) withdraw its objection to the amount of the Claim

1 that is in excess of the Claimant's equity interest in DTDF, or \$76,952.62, without
2 prejudice to the USACM Trust's right to later object to such amount.

3 7. This stipulation shall not affect any other claims filed by Claimant in these
4 jointly-administered bankruptcy proceedings.

5 8. This stipulation shall not affect either the amount or validity of Claimant's
6 equity interest in DTDF as reflected in DTDF's books and records as of the Petition Date.

7 WHEREFORE, based on the stipulation set forth above, the parties hereby agree
8 and request that the Court approve this stipulation as an order of the Court pursuant to Fed.
9 R. Bankr. P. 3006, as follows:

10 1. Proof of Claim No. 10725-00545 is hereby amended to a general unsecured
11 claim in the amount of \$76,952.62.

12 2. Proof of Claim No. 10725-00545 is hereby disallowed in its entirety as
13 against DTDF.

14 3. Claimant's equity interest in DTDF is hereby allowed in the amount of
15 \$48,047.32, as reflected in DTDF's books and records as of the Petition Date.

16 4. The USACM Trust reserves all of its rights to object to Proof of Claim No.
17 10725-00545, as amended.

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5. The hearing on the Objection to Claim No. 10725-00545 scheduled for December 14, 2007, at 9:30 a.m., may be vacated.

DATED: October 19, 2007.

LEWIS AND ROCA LLP

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ELIAS FAMILY TRUST DTD 5/19/04

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**LEWIS
AND
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LLP
LAWYERS

1 5. The hearing on the Objection to Claim No. 10725-00545 scheduled for
2 December 14, 2007, at 9:30 a.m., may be vacated.

3 DATED: October 18, 2007.

4 **LEWIS AND ROCA LLP**

SNELL & WILMER, LLP

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16 **ELIAS FAMILY TRUST DTD 5/19/04**

17 By 

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